

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 04-11408-JMD  
Chapter 11

Wrenn Associates, Inc.,  
Debtor

Longchamps Electric, Inc.,  
Plaintiff

v.

Adv. No. 04-1114-JMD

Daniel E. Rothenberg and  
Kohl's Department Stores, Inc.,  
Defendants

Miller Engineering & Testing, Inc.,  
Plaintiff

v.

Adv. No. 04-1115-JMD

Wrenn Associates, Inc.,  
Daniel E. Rothenberg and  
Kohl's Department Stores, Inc.,  
Defendants

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## **MEMORANDUM OPINION**

### **I. BACKGROUND**

#### **A. Longchamps Suit**

Pursuant to a written subcontract agreement dated September 8, 2003, Longchamps Electric, Inc. ("Longchamps") provided electrical goods and services as a subcontractor to the Debtor, who served as the general contractor for a project in West Lebanon, New Hampshire, constructing a Kohl's department store (the "West Lebanon Store") on real property owned by Daniel E. Rothenberg ("Rothenberg") and leased to Kohl's Department Stores, Inc. ("Kohl's"). On April 16, 2004, the Debtor filed a Chapter 11 bankruptcy petition with this Court. On or about April 20, 2004, Longchamps brought suit in the State of New Hampshire in the Hillsborough County Superior Court, Northern District, against Kohl's and Rothenberg and further obtained a \$227,827.00 mechanic's lien attachment against the real property in West Lebanon (the "Longchamps Suit"). In its suit, Longchamps has set forth three counts: Counts I and II sought an award for unjust enrichment against Rothenberg and Kohl's and Count III sought a mechanic's lien against Rothenberg.

On May 26, 2004, Kohl's filed a notice of removal in order to remove the Longchamps Suit to this Court pursuant to 28 U.S.C. §§ 1446 and 1452 and Federal Rule of Bankruptcy

Procedure 9027 (“Rule 9027”). On June 23, 2004, Longchamps filed a motion pursuant to 28 U.S.C. §§ 1334 and 1452 and Rule 9027 requesting the Court to remand the Longchamps Suit back to state court or, in the alternative, to dismiss it and/or abstain from hearing it (Doc. No. 11) (the “Longchamps Motion”).

### **B. Miller Suit**

Pursuant to a written subcontract agreement with the Debtor, who served as general contractor for the Lebanon Store, Miller Engineering & Testing, Inc. (“Miller”) provided testing and inspection services. On April 14, 2004, Miller brought suit in the State of New Hampshire in Hillsborough County Superior Court, Northern District, against the Debtor, Rothenberg and Kohl’s and obtained a \$29,726.04 mechanic’s lien attachment against the real property in West Lebanon, New Hampshire owned by Rothenberg where the Lebanon Store is located (the “Miller Suit”). On April 16, 2004, the Debtor filed a Chapter 11 bankruptcy petition with this Court. In its suit, Miller has set forth two counts: Count I sought damages from the Debtor for breach of contract and Count II sought an award for unjust enrichment against Rothenberg and Kohl’s.

On May 27, 2004, Kohl’s filed a notice of removal in order to remove the Miller Suit to this Court pursuant to 28 U.S.C. §§ 1446 and 1452 and Rule 9027. On June 3, 2004, Miller filed a motion pursuant to 28 U.S.C. §§ 1334 and 1452 and Rule 9027 requesting the Court to dismiss, abstain and remand the Miller Suit back to state court (Doc. No. 5) (the “Miller Motion”).

### **C. Procedural History**

The Court held a hearing on the Longchamps Motion and the Miller Motion on July 13, 2004. Kohl’s and Rothenberg argued that the Longchamps Suit and the Miller Suit involve “core” matters within the meaning of 28 U.S.C. § 157(b)(2), that therefore the Court has jurisdiction over the actions under 28 U.S.C. § 1334(b) as the Longchamps Suit and the Miller Suits are proceedings

either arising under title 11 or arising in a case under title 11, and that the requirements for mandatory abstention under 28 U.S.C. § 1334(c)(2) and discretionary abstention under 28 U.S.C. § 1334(c)(1) have not been met. Longchamps and Miller argue that their respective suits involve only the Court’s “related to” jurisdiction under 28 U.S.C. § 1334(b) and that grounds for both mandatory and discretionary abstention exist and, therefore, their suits should be remanded to state court.

## **II. DISCUSSION**

Section 1452(a) of title 28 provides that “[a] party may remove any claim or cause of action in a civil action . . . to the district court for the district where such action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.” 28 U.S.C. § 1452(a). Section 1334(a) of title 28 provides that “district courts shall have original and exclusive jurisdiction of all cases under title 11.” 28 U.S.C. § 1334(a). As articulated by the United States Bankruptcy Appellate Panel for the First Circuit, under 28 U.S.C. § 1344(b) “a party may remove a cause of action from state court to the bankruptcy court if it is an action arising under title 11, or arising in or ‘related to’ a case under title 11.” Work/Family Directions, Inc. v. Children’s Discovery Centers, Inc. (In re Santa Clara County Child Care Consortium), 223 B.R. 40, 43 (B.A.P. 1<sup>st</sup> Cir. 1998). Actions “arising under” title 11 or “arising in” a case under title 11 are referred to as “core” proceedings and are specifically referenced in 28 U.S.C. § 157(b)(2). McDowell Welding & Pipefitting, Inc. v. United States Gypsum Co., 285 B.R. 460, 471 (D. Or. 2002). Actions that are “related to” a case under title 11 do not involve a substantive right created by the federal bankruptcy laws and could be maintained outside of the bankruptcy proceeding, but

the outcome of the action could have an effect on the bankruptcy estate. Id. at 472. Related to actions are “non-core” proceedings. Id.

Section 157(a) of title 28 provides that “district court[s] may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.” 28 U.S.C. § 157(a). The United States District Court for the District of New Hampshire has referred all cases and proceedings in bankruptcy to this Court pursuant to 28 U.S.C. § 157(a) and the District Court’s standing order dated January 18, 1994. See LR 77.4(a). Section 157(b)(1) of title 28 provides that “[b]ankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments . . . .” 28 U.S.C. § 157(b)(1). “A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11.” 28 U.S.C. § 157(c)(1). However, in any such non-core proceeding, “the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge’s proposed findings and conclusions after reviewing de novo those matters to which any party has timely and specifically objected.” Id. With the consent of the parties, however, a bankruptcy judge may hear and determine a non-core proceeding related to a case under title 11 and enter appropriate orders and judgments. Id. § 157(c)(2).

When presented with a motion to remand a proceeding which has been removed from the state court, the bankruptcy court must first evaluate whether the state court action was properly removed; that is, it must determine whether it has subject matter jurisdiction over the proceeding. In doing so, the bankruptcy court must decide whether the removed action is one arising under or arising in a case under title 11 or is an action “related to” a case under title 11.

Santa Clara Child Care, 223 B.R. at 44.

The first issue then before the Court is whether the Court has jurisdiction over the Longchamps Suit and the Miller Suit such that removal under 28 U.S.C. § 1452(a) was proper. This involves a determination that one of the three bases for jurisdiction under 28 U.S.C. § 1334(b) applies. If the Court finds that it has jurisdiction over the Longchamps Suit and/or the Miller Suit, the Court must then determine whether grounds exist under 28 U.S.C. § 1452(b) to remand either suit to the Hillsborough County Superior Court, Northern District. Id. Section 1452(b) of title 28 permits a court to which a claim or cause of action has been removed to “remand such claim or cause of action on any equitable ground.” 28 U.S.C. § 1452(b). As part of that determination, Longchamps and Miller have asked the Court to consider the mandatory and discretionary abstention provisions of 28 U.S.C. § 1334(c).

#### **A. Jurisdiction over the Longchamps Suit**

The Longchamps Suit is an action “arising under” title 11 if it involves a cause of action created or determined by a statutory provision of the Bankruptcy Code. New England Power & Marine, Inc. v. Town of Tyngsborough (In re Middlesex Equip. & Marine, Inc.), 292 F.3d 61, 68 (1<sup>st</sup> Cir. 2002); Santa Clara Child Care, 223 B.R. at 43 n.2 (citing Goldstein v. Marine Midland Bank, N.A. (In re Goldstein), 201 B.R. 1, 4 (Bankr. D. Me. 1996)); Drexel Burnham Lambert Group, Inc. v. Vigilant Ins. Co., 130 B.R. 405, 407 (S.D.N.Y. 1991) (cited in Port Auth. of New York and New Jersey v. CCI-Bowers Co., No. 91-5681 (CSF), 1992 WL 164441, at \*3 (D.N.J. June 15, 1992)). The Longchamps Suit “arises in” a case under title 11 if it would have no existence outside of bankruptcy even if it is not based on any right expressly created by title 11. Middlesex Equip. & Marine, 292 F.3d at 68; Santa Clara Child Care, 223 B.R. at 43 n.3 (citing Goldstein, 201 B.R. at 4); Drexel Burnham, 130 B.R. at 407 (cited in CCI-Bowers Co., 1992 WL

164441, at \*3). The Longchamps Suit is “related to” a case under title 11 if it could potentially have some effect on the bankruptcy estate, such as altering the Debtor’s rights, liabilities, options, or freedom of action or otherwise have an impact upon the handling and administration of the bankruptcy estate. Middlesex Equip. & Marine, 292 F.3d at 68; Santa Clara Child Care, 223 B.R. at 45 (quoting Pacor, Inc. v. Higgins, 743 F.2d 984, 993 (3<sup>d</sup> Cir. 1984)); Drexel Burnham, 130 B.R. at 407 (cited in CCI-Bowers Co., 1992 WL 164441, at \*3).

In the Longchamps Suit, Longchamps seeks to recover money from Kohl’s and Rothenberg based on unjust enrichment and to impose a mechanic’s lien against Rothenberg’s West Lebanon property. Longchamps characterizes its suit as one involving only claims by a non-debtor unpaid subcontractor against a non-debtor property owner and a non-debtor project owner, which concerns only non-core or “related to” claims rather than “core” proceedings in bankruptcy. Kohl’s and Rothenberg argue that the Longchamps Suit involves core proceedings that arise in or under the Debtor’s bankruptcy case. According to Kohl’s and Rothenberg, the Longchamps Suit will impact claims against the Debtor’s estate, claims by the Debtor’s estate, and the assets of the Debtor’s estate. They argue that if litigated to its conclusion, the Longchamps Suit could and would decide (1) the existence and extent of Kohl’s liability to the Debtor; (2) Kohl’s rights of setoff against the Debtor; (3) the merits of any counterclaims that Kohl’s may have against the Debtor; (4) the liability of the Debtor to Longchamps; and (5) counterclaims or setoffs Wrenn may have against Longchamps.

While on its face the Longchamps Suit appears to involve merely state law claims between non-debtor parties and the validity of a lien on property that is not property of the estate, the Court agrees with Kohl’s and Rothenberg that a broader examination of the Longchamps Suit reveals that the determination of Longchamps’ unjust enrichment and mechanic’s lien claims will involve core

matters within the meaning of 28 U.S.C. § 157(b). The Longchamps Suit will impact the Debtor's bankruptcy case because under New Hampshire law, a subcontractor's mechanic's lien is only valid to the extent that monies are owed to the general contractor. RSA 447:6; Russell v. Woodbury, 135 N.H. 432, 434 (1992). Accordingly, the deciding court cannot determine the validity of Longchamps' mechanic's lien claim without first determining the liability of Kohl's and Rothenberg to the Debtor. Id. at 435. To the extent that Rothenberg's property is subject to a lien in order to satisfy the enforcement of Longchamps' claim against the Debtor, Kohl's alleges that it will be required to indemnify Rothenberg and then offset whatever amounts remain due to the Debtor. The bankruptcy estate would thereby be diminished by any offset. See Town of Colchester v. Hinesburg Sand and Gravel, Inc. (In re APC Constr., Inc.), 112 B.R. 89, 100 (Bankr. D. Vt. 1990). The extent of Longchamps' mechanic's lien claim is also limited by the amount of the Debtor's obligations to it for unpaid labor and materials. Westinghouse Elec. Supply Co. v. Electromech, Inc., 119 N.H. 833, 837 (1979). The determination of the Debtor's obligations to Longchamps will involve amounts previously paid and remaining due to Longchamps under its subcontract with the Debtor as well as any offsets or counterclaims which the Debtor may hold against Longchamps. In effect, the deciding court will of necessity be required to determine the amount of Longchamps' claim against the Debtor. Therefore, the determination of Longchamps' claims against Kohl's, Rothenberg and Rothenberg's property will of necessity involve the determination of the amounts owed to the Debtor by Kohl's and Rothenberg, the priority of the competing claims of the Debtor and Longchamps to such amounts, and the claim of Longchamps against the Debtor.

The determination of the Longchamps Suit will involve what is property of the estate, 28 U.S.C. § 157(b)(2)(A) and (E), the validity, priority and extent of a competing lien or claim



against that property, 28 U.S.C. § 157(b)(2)(K), counterclaims by the estate against Kohl's and Longchamps, 28 U.S.C. § 157(b)(2)(C), the determination of the claim of a creditor against the estate, 28 U.S.C. § 157(b)(2)(B), and the liquidation of assets of the estate, 28 U.S.C. § 157(b)(2)(O). Thus, the resolution of the Longchamps Suit will involve matters arising under title 11 and arising in a case under title 11. 28 U.S.C. § 1334(b). Such matters are core proceedings which may be heard and decided by bankruptcy judges. 28 U.S.C. § 157(b). See, e.g., France v. France (In re France), 63 B.R. 777, 779 (D.N.H. 1986); Berton Group, Inc. v. BKW Sys., Inc. (In re BKW Sys., Inc.), 66 B.R. 546, 547-48 (Bankr. D.N.H. 1986); Bedford Computer Corp. v. Ginn Publ'g, Inc. (In re Bedford Computer Corp.), 61 B.R. 594, 595 (Bankr. D.N.H. 1986), aff'd 63 B.R. 79 (D.N.H. 1986).

In addition, the Court notes that the Debtor has filed an adversary proceeding against Longchamps, and other subcontractors, as well as Kohl's (Adv. No. 04-1176-JMD), in which it seeks a declaratory judgment that:

1. The balance due the Debtor under its contract with Kohl's with respect to the West Lebanon Store is property of estate subject to Kohl's setoff rights under state law;
2. Rothenberg and S.R. Weiner & Associates, the master lease landlord, have no liability to the subcontractors and suppliers and therefore the property is not subject to statutory liens or lien rights.
3. Establishes the amount due the Debtor from Kohl's on the West Lebanon project, confirms that only Kohl's has the right to exercise its setoff rights, and determines that Kohl's has no liability to any subcontractor or supplier except for paying the balance due under Kohl's contract with the Debtor;
4. Confirms that any statutory liens against the West Lebanon property shall be discharged by Kohl's payment of the balance due under Kohl's contract with the Debtor; and
5. Confirms that under New Hampshire state law, perfected subcontractors and supplier will share pro rata the net balance due under Kohl's contract with the Debtor.

The Debtor's adversary proceeding raises many of the same issues implicated by the Longchamps Suit. The Court finds that these matters are no less core than they would have been had they been brought in connection with the claims process under title 11. See PSINet, Inc. v. Cisco Sys. Capital Corp. (In re PSINet, Inc.), 271 B.R. 1, 12 (Bankr. S.D.N.Y. 2001). As the United States Court of Appeals for the First Circuit stated in Arnold Print Works, Inc. v. Apkin (In re Arnold Print Works, Inc.), 815 F.2d 165, 169 (1<sup>st</sup> Cir. 1987), "[i]t is the nature of the proceeding—its relation to the basic function of the bankruptcy court—not the state or federal basis for the claim, that makes the difference here."

For these reasons, the Court concludes that the Longchamps Suit ultimately involves core matters that arise under title 11 and in a case under title 11. The Court's conclusion is also in accord with the decision in Arnold Print Works, wherein the First Circuit further stated that "'core proceedings' would be interpreted broadly, close to or congruent with constitutional limits." Id. at 168. Accordingly, the Court finds that it has jurisdiction of this proceeding under 28 U.S.C. § 1334(b) and removal of the Longchamps Suit was proper under 28 U.S.C. § 1452(a).

#### **B. Jurisdiction over the Miller Suit**

The Miller suit was commenced prepetition against the Debtor, Kohl's and Rothenberg. Count I involves a determination of Miller's claim against the Debtor. Such an action is clearly an action that involves a claim arising under title 11 and is a core proceeding. See 28 U.S.C. § 157(b)(2)(B). Count II involves an unjust enrichment claim against Rothenberg and Kohl's which is indistinguishable from the similar claim brought by Longchamps in its postpetition suit for unjust enrichment. For the reasons discussed above, the Court finds the Miller Suit raises matters that arise under title 11 and arise in a case under title 11 that are core proceedings.

### C. Is Remand or Abstention Appropriate?

At the hearing and through their pleadings, the parties have referred the Court to the mandatory and discretionary abstention provisions of 28 U.S.C. § 1334(c); however, some courts have held that such provisions are inapplicable in removed actions. See, e.g., McDowell Welding & Pipefitting, Inc. v. United States Gypsum Co., 285 B.R. 460, 475 (D. Or. 2002) (“Where a case has been removed to federal court, the state case ceases to exist and § 1334 is no longer applicable.”); ML Media P’ship, LP v. Century/ML Cable Venture (In re Adelphia Communications Corp.), 285 B.R. 127, 143 (Bankr. S.D.N.Y. 2002); Southern Marine and Indus. Servs., Inc. v. AK Eng’g, Inc. (In re AK Servs., Inc.), 159 B.R. 76, 83-84 (Bankr. D. Mass. 1993). Rather, they hold that “[s]ection 1452(b) gives the federal court the ability to send cases that should be heard in state court back to the state courts, in the exact context of actions that have been removed from the state court to the federal court.” Adelphia Communications, 285 B.R. 143.

Courts have explained that:

[F]ederal courts do not effectively respond to removed cases by abstaining from hearing the case, for that would not send the case back to state court. The usual procedural device employed to “abstain” is to dismiss the matter pending before the federal tribunal, so that the parallel matter can proceed in the alternate forum (e.g., state court, administrative board). Invoking abstention in the context of the removed case would result (in the usual case) in eliminating the lawsuit. Remand, on the other hand, preserves the lawsuit, without disturbing original filing dates or such service of process as may have been accomplished before the suit was removed to federal court. Again, removal and remand contemplate one action, the question presenting being which tribunal handles it. Abstention, on the other hand, contemplates two actions (or the potential for two actions), the question presented being which action will take precedence and go forward first (in lieu of the other).

In re Branded Prods., Inc., 154 B.R. 936, 940 (Bankr. W.D. Tex. 1993) (emphasis in original)

(citations and footnotes omitted) (quoted in AK Servs., 159 B.R. at 83-84). Since the Court has found that the Longchamps Suit and the Miller Suit both involve resolution of matters arising under

title 11 and arising in a case under title 11, mandatory abstention would not be available under 28 U.S.C. § 1334(c)(2).

Section 1452(b) of title 28 permits courts to remand removed actions “on any equitable ground.” 28 U.S.C. § 1452(b). Thus, the Court’s focus should be on whether equitable grounds exist to remand the Longchamps Suit or the Miller Suit (collectively the “Suits”), which analysis may encompass consideration of some of the elements pertinent to a decision to abstain. AK Serv., 159 B.R. at 84.

In deciding whether to remand the removed Suits, the Court may consider the following factors:

1. the effect of the action on the administration of the bankruptcy estate;
2. the extent to which the issues of state law predominate;
3. the difficulty of applicable state law;
4. comity;
5. the relatedness or remoteness of the action to the bankruptcy case;
6. the existence of a right to a jury trial; and
7. prejudice to the party involuntarily removed from state court.

Cenisth Partners, L.P. v. Hambrecht & Quist, Inc. (In re VideOcart, Inc.), 165 B.R. 740, 744 (Bankr. D. Mass. 1994) (cited in Santa Clara Child Care, 223 B.R. at 46); see also Adelphia Communications, 285 B.R. at 144. The Court has discretion to determine whether remand is appropriate in a given proceeding. Adelphia Communications, 285 B.R. at 144.

#### **1. Effect of the Action on the Administration of the Bankruptcy Estate**

The Court regards this factor as one of the most important in determining whether to remand an action. As detailed above, the Suits ultimately will require resolution of the Debtor’s

right to be paid by Kohl's for its work on the West Lebanon Store and it will necessarily resolve the amount of Longchamps' and Miller's claims against the Debtor in its bankruptcy case because New Hampshire mechanic's lien law limits a subcontractor's claim to the lesser of the amounts owed by the project owner to the contractor and the amounts owed by the contractor to a subcontractor. These determinations will affect the administration of the Debtor's estate because it will impact the accounts receivable owed to the Debtor, the priority of competing claims to such accounts receivable, the claims of Longchamps and Miller against the estate and ultimately the distribution of assets to all creditors of the bankruptcy estate.

## **2. Extent to Which the Issues of State Law Predominate**

State law issues are a significant part of the Suits and thus this factor does militate in favor of remand. However, bankruptcy courts often address matters of state law as the bankruptcy process is enmeshed with state law issues. Adelphia Communications, 285 B.R. at 145 (quoting Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 97 (White, J., dissenting)). In addition, state law will require the deciding court to determine many issues which arise under title 11 and arise in a case under title 11. Accordingly, the bankruptcy matters are at least as significant as the state law matters and this factor does not mandate remand.

## **3. Difficulty of Applicable State Law**

The Court has experience dealing with state law in general as well as mechanic's lien law. The parties have raised, however, the novel issue of whether Longchamps and Miller can obtain a mechanic's lien against Rothenberg, the owner of the West Lebanon property, where Longchamps contracted with the Debtor who is owed money only by Kohl's and not by Rothenberg. While this fact might suggest that remand to state court is appropriate, the Court finds that to the extent this issue is determinative and there is no controlling precedent from the New Hampshire Supreme

Court, it is possible for that question to be certified directly the New Hampshire Supreme Court for resolution. New Hampshire Supreme Court Rule 34.

#### **4. Comity**

“Comity ‘focuses on the state’s interest in developing its law and applying its law to its citizens.’” Adelphia Communications, 285 B.R. at 146 (quoting Renaissance Cosmetics, Inc. v. Dev. Specialists Inc., 277 B.R. 5, 16 (S.D.N.Y. 2002)). In the Court’s view, comity does not require remand in this case. The Debtor, Longchamps and Miller are New Hampshire corporations and the state law that is to be applied is New Hampshire’s. Kohl’s and Rothenberg, non-citizens, have consented to the state’s jurisdiction. Accordingly, this factor does not support remand. In addition, practical convenience and expediency suggest that it would be better for one court to handle the multitude of suits that have been filed by subcontractors and suppliers against the Debtor, Kohl’s, and Rothenberg arising from the West Lebanon Store. This will avoid delay that might result from suits being brought in different venues and will help insure consistency in results. Hearing these cases in one venue should avoid duplicate and uneconomic efforts on the part of Longchamps, Miller and other subcontractors and suppliers on the West Lebanon Store.

#### **5. Relatedness or Remoteness of the Action to the Bankruptcy Case**

The factor of relatedness or remoteness to the Debtor’s main bankruptcy case weighs heavily against remand in this case. As detailed above, the Longchamps Suit necessarily will involve determinations of the amount that the Debtor owes to Longchamps and Miller, the amount that Kohl’s owes to the Debtor, any counterclaims and offsets between the Debtor and those parties, as well as the priority of any competing claims against amounts that Kohl’s may owe to the Debtor. Accordingly, the court considering the matter will be required to decide the amount of Longchamps’ and Miller’s claims in the Debtor’s bankruptcy and the extent to which money owed

by Kohl's is property of the Debtor's estate. These determinations are intimately related to the Debtor's bankruptcy and as explained above are core proceedings.

#### **6. Existence of a Right to a Jury Trial**

Longchamps has apparently requested a jury trial. Without determining whether Longchamps is entitled to a jury trial, the Court admits that this factor weighs in favor of remand. However, this factor is tempered by the fact that, to the extent that a trial by jury is required on one or more issues, this Court could preside over a jury trial with Longchamps' consent and a district court judge could preside in the absence of consent.

#### **7. Prejudice to the Party Involuntarily Removed from State Court**

The Court finds that neither Longchamps nor Miller will suffer any significant prejudice as an involuntary removed party since the Suits were both removed to this Court, which is located in the same city as the court from which the Suits were removed, Hillsborough County Superior Court, Northern District.

Considering these factors all together, the Court concludes in its discretion that remanding the Longchamps Suit or the Miller Suit to state court is not appropriate under 28 U.S.C. § 1452(b) and would be contrary to the interests of justice.

### **III. CONCLUSION**

For the reasons set forth above, the Court concludes that the Longchamps Suit and the Miller Suit were properly removed to this Court pursuant to 28 U.S.C. § 1452(a) as the Court has jurisdiction pursuant to 28 U.S.C. § 1334(b). The Court further concludes that there are insufficient equitable grounds to remand the Longchamps Suit or the Miller Suit to state court. Accordingly, the Longchamps Motion and the Miller Motion will be denied, and these matters will

proceed in this Court in the ordinary course. Separate pretrial hearings will be held after which the Court will issue pretrial scheduling orders setting discovery deadlines and trial dates.

This opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue separate orders consistent with this opinion.

ENTERED at Manchester, New Hampshire.

Date: July 26, 2004

/s/ J. Michael Deasy  
J. Michael Deasy  
Bankruptcy Judge